

§ 288g(c), the Senate may direct its counsel to perform other duties: Now therefore, be it

Resolved, That the Senate Legal Counsel is authorized to represent all Members of the Senate, the Vice President, the President Pro Tem, the Secretary of the Senate, the Sergeant at Arms, and the Congress, in the case of *Josue Orta Rivera v. Congress of the United States of America, et al.*

SENATE RESOLUTION 227—EXPRESSING THE PROFOUND SORROW OF THE SENATE FOR THE DEATH OF INDIANA GOVERNOR FRANK O'BANNON AND EXTENDING THOUGHTS, PRAYERS, AND CONDOLENCES TO HIS FAMILY, FRIENDS AND LOVED ONES

Mr. BAYH (for himself and Mr. LUGAR) submitted the following resolution; which was considered and agreed to:

S. RES. 227

Whereas Frank O'Bannon devoted his entire life to public service and to the people of the State of Indiana;

Whereas Frank O'Bannon dedicated his life to defending the Nation's principles of freedom and democracy, serving in the United States Air Force from 1952 until 1954;

Whereas Frank O'Bannon served 18 years in the Indiana State Senate and 8 years as Lieutenant Governor of Indiana;

Whereas, on November 5, 1996, Frank O'Bannon was elected the 47th Governor of the State of Indiana, where he served until his death on September 13, 2003;

Whereas Frank O'Bannon was a true friend to Indiana, and a gentle man of integrity, kindness, and good works; and

Whereas Frank O'Bannon will be remembered as a loving husband to his wife Judy, a devoted father to his 3 children, and a caring grandfather to his 5 grandchildren: Now, therefore, be it

Resolved, That the Senate—

(1) has learned with profound sorrow of the death of the Honorable Frank O'Bannon, Governor of Indiana, on September 13, 2003;

(2) extends its condolences to the O'Bannon family, especially to his wife Judy, his children Jonathan, Jennifer, and Polly, and his grandchildren Beau, Chelsea, Asher, Demi, and Elle;

(3) expresses its profound gratitude to Frank O'Bannon for the services that he rendered to the Nation in the United States Air Force and the Indiana State Legislature, and as Governor of Indiana; and

(4) recognizes with respect Frank O'Bannon's integrity, steadfastness, and loyalty to the State of Indiana and to the United States.

SENATE CONCURRENT RESOLUTION 69—PROVIDING THAT ANY AGREEMENT RELATING TO TRADE AND INVESTMENT THAT IS NEGOTIATED BY THE EXECUTIVE BRANCH WITH OTHER COUNTRIES MUST COMPLY WITH CERTAIN MINIMUM STANDARDS

Mr. FEINGOLD submitted the following concurrent resolution; which was referred to the Committee on Finance:

S. CON. RES. 69

Whereas there is general consensus among the American public and the global community that, with respect to international trade and investment rules—

(1) global environmental, labor, health, food security, and other public interest standards must be strengthened to prevent a global "race to the bottom";

(2) domestic environmental, labor, health, food security, and other public interest standards and policies must not be undermined, including those based on the use of the precautionary principle, the internationally recognized legal principle which holds that, when there is scientific uncertainty regarding the potential adverse effects of an action or a product or technology, governments should act in a way that minimizes the risk of harm to human health and the environment;

(3) provision and regulation of public services such as education, health care, transportation, energy, water, and other utilities are basic functions of democratic government and must not be undermined;

(4) raising standards in developing countries requires additional assistance and respect for diversity of policies and priorities;

(5) countries must be allowed to design and implement policies to sustain family farms and achieve food security;

(6) healthy national economies are essential to a healthy global economy, and the right of governments to pursue policies to maintain and create jobs must be upheld;

(7) the right of State and local and comparable regional governments of all countries to create and enforce diverse policies must be safeguarded from imposed downward harmonization; and

(8) rules for the global economy must be developed and implemented democratically and with transparency and accountability; and

Whereas many international trade and investment agreements in existence and currently being negotiated do not serve these interests, and have caused substantial harm to the health and well-being of communities in the United States and within countries that are trading partners of the United States: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That any agreement relating to trade and investment that is negotiated by the executive branch with other countries should comply with the following:

(1) REGARDING INVESTOR AND INVESTMENT POLICY.—No such agreement that includes provisions relating to foreign investment may permit foreign investors to challenge or seek compensation because of a measure of a government at the national, State, or local level that protects the public interest, including, but not limited to, public health, safety, and welfare, the environment, and worker protections, unless a foreign investor demonstrates that the measure was enacted or applied primarily for the purpose of discriminating against foreign investors or investments.

(2) REGARDING SERVICES.—Any such agreement, to the extent applicable, shall comply with the following:

(A)(i) The agreement may not discipline government measures relating to—

(I) public services, including public services for which the government is not the sole provider;

(II) services that require extensive regulation;

(III) essential human services; and

(IV) services that have an essentially social component.

(ii) The services described in subclauses (I) through (IV) of clause (i) include, but are not limited to, public benefit programs, health care, health insurance, public health, child care, education and training, the distribution of controlled substances and products, including alcohol and tobacco and firearms, research and development on natural and so-

cial sciences, utilities including energy utilities, water, waste disposal and sanitation, national security, maritime, air, surface, and other transportation services, postal services, energy extraction and related services, and correctional services.

(B) The agreement shall permit countries that have made commitments in areas covered in subparagraph (A) to revise those commitments for the purposes of public interest regulation without financial or other trade-related penalties.

(C) The agreement shall ensure that rules on subsidies and government procurement fully protect the ability of governments to support and purchase services in ways that promote economic development, social justice and equity, public health, environmental quality, and human and workers' rights.

(D) The agreement shall make no new commitments on the temporary entry of workers because such policies should be determined by the Congress, after consideration by the congressional committees with jurisdiction over immigration to avoid an array of inconsistent policies and policies which fail to—

(i) include labor market tests that ensure that the employment of such temporary workers will not adversely affect other similarly employed workers;

(ii) involve labor unions in the labor certification process implemented under the immigration program for temporary workers under section 101(a)(15)(H)(i) of the Immigration and Nationality Act, including the filing by an employer of an application under section 212(n)(1) of that Act; and

(iii) guarantee the same workplace protections for temporary workers that are available to all workers.

(E) The agreement shall guarantee that all governments that are parties to the agreement can regulate foreign investors in services and other service providers in order to protect public health and safety, consumers, the environment, and workers' rights, without requiring the governments to establish their regulations to be the least burdensome option for foreign service providers.

(3) REGARDING POLICIES TO SUPPORT AMERICAN WORKERS AND SMALL, MINORITY, AND WOMEN-OWNED BUSINESSES.—Any such agreement shall preserve the right of Federal, State, and local governments to maintain or establish policies to support American workers and small, minority, or women-owned businesses, including, but not limited to, policies with respect to government procurement, loans, and subsidies.

(4) REGARDING ENVIRONMENTAL, LABOR, AND OTHER PUBLIC INTEREST STANDARDS.—Any such agreement—

(A) may not supersede the rights and obligations of parties under multilateral environmental, labor, and human rights agreements; and

(B) shall, to the extent applicable, include commitments, subject to binding enforcement on the same terms as commercial provisions—

(i) to adhere to specified workers' rights and environmental standards;

(ii) not to diminish or fail to enforce existing domestic labor and environmental provisions; and

(iii) to abide by the core labor standards of the International Labor Organization (ILO).

(5) REGARDING UNITED STATES TRADE LAWS.—No such agreement may—

(A) contain a provision which modifies or amends, or requires a modification of or an amendment to, any law of the United States that provides to United States businesses or workers safeguards from unfair foreign trade practices, including any law providing for—

(i) the imposition of countervailing or antidumping duties;

(ii) protection from unfair methods of competition or unfair acts in the importation of articles;

(iii) relief from injury caused by import competition;

(iv) relief from unfair trade practices; or

(v) the imposition of import restrictions to protect the national security; or

(B) weaken the existing terms of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, or the Agreement on Subsidies and Countervailing Measures, of the World Trade Organization, including through the domestic implementation of rulings of dispute settlement bodies.

(6) REGARDING FOOD SAFETY.—No such agreement may—

(A) restrict the ability of the United States to ensure that food products entering the United States are rigorously inspected to establish that they meet all food safety standards in the United States, including inspection standards;

(B) force acceptance of different food safety standards as “equivalent”, or require international harmonization of food safety standards, which undermine the level of human health protection provided under domestic law; or

(C) restrict the ability of governments to enact policies to guarantee the right of consumers to know where and how their food is produced.

(7) REGARDING AGRICULTURE AND FOOD SECURITY.—No such agreement may, with respect to food and other agricultural commodities—

(A) contain provisions that prevent countries from—

(i) establishing domestic and global reserves,

(ii) managing supply,

(iii) enforcing antidumping disciplines,

(iv) ensuring fair market prices, or

(v) vigorously enforcing antitrust laws,

in order to guarantee competitive markets for family farmers; or

(B) prevent countries from developing the necessary sanitary and phytosanitary standards to prevent the introduction of pathogens or other potentially invasive species which may adversely affect agriculture, human health, or the environment.

(8) REGARDING TRANSPARENCY.—(A) The process of negotiating any such agreement must be open and transparent, including through—

(i) prompt and regular disclosure of full negotiating texts; and

(ii) prompt and regular disclosure of negotiating positions of the United States.

(B) In negotiating any such agreement, any request or offer relating to investment, procurement, or trade in services must be made public within 10 days after its submission if such request or offer—

(i) proposes specific Federal, State, and local laws and regulations in the United States to be changed, eliminated, or scheduled under such an agreement, including, but not limited to, subsidies, tax rules, procurement rules, professional standards, and rules on temporary entry of persons;

(ii) proposes for coverage under such an agreement—

(I) specific essential public services, including, but not limited to, public benefits programs, health care, education, national security, sanitation, water, energy, and other utilities; or

(II) private service sectors that require extensive regulation or have an inherently social component, including, but not limited to, maritime, air transport, trucking, and other transportation services, postal services, utilities such as water, energy, and sanitation, corrections, education and childcare, and health care; or

(iii) proposes a discipline or process of general application which may interfere with the ability of the United States or State, local, or tribal governments to adopt, implement, or enforce laws and regulations identified in clause (i) or provide or regulate services identified in clause (ii).

(C) The broad array of constituencies representing the majority of the people of the United States, including labor unions, environmental organizations, consumer groups, family farm groups, public health advocates, faith-based organizations, and civil rights groups, must have at least the same representation on trade advisory committees and access to trade negotiators and negotiating fora as those constituencies representing commercial interests.

(D) Any dispute resolution mechanism established in any such agreement must be open and transparent, including through disclosure to the public of documents and access to hearings, and must permit participation by nonparties through the filing of amicus briefs, as well as provide for standing for State and local governments as intervenors.

(9) REGARDING GOVERNMENTAL AUTHORITY.—No such agreement may contain provisions that bind national, State, local, or comparable regional governments to limiting regulatory, taxation, spending, or procurement authority without an opportunity for public review and comment described in paragraph (8), and without the explicit, informed consent of the national, State, local, or comparable regional legislative body concerned, through such means as is decided by such legislative body.

(10) REGARDING ACCESS TO MEDICINES AND SEEDS.—(A) No such agreement may contain provisions that prevent countries from taking measures to protect public health by ensuring access to medicines.

(B) No such agreement may constrain the rights of farmers to save, use, exchange, or sell farm-saved seeds and other publicly available seed varieties.

(11) REGARDING DEVELOPING COUNTRIES.—Any such agreement must grant special and differential treatment for developing countries with regard to the timeframe for implementation of the agreement as well as other concerns.

Mr. FEINGOLD. Mr. President, I am pleased to submit legislation to establish some minimum standards for the trade agreements into which our Nation enters. This measure is a companion to H. Con. Res. 276, a resolution introduced in the other body by my colleague from Ohio, (Mr. BROWN).

The record of the major trade agreements into which our Nation has entered over the past few years has been dismal. Thanks in great part to the flawed fast track rules that govern consideration of legislation implementing trade agreements, the United States has entered into a number of trade agreements that have contributed to the significant job loss we have seen in recent years, and have laid open to assault various laws and regulations established to protect workers, the environment, and our health and safety. Indeed, those agreements undermine the very democratic institutions through which we govern ourselves.

The loss of jobs, especially manufacturing jobs, to other countries has been devastating to Wisconsin, and to the entire country. When I opposed the North American Free Trade Agree-

ment, the Uruguay round of the General Agreement on Tariffs and Trade, Permanent Normal Trade Relations for China, and other flawed trade measures, I did so in great part because I believed they would lead to a significant loss of jobs. But even as an opponent of those agreements, I don't think I could have imagined just how bad things would get in so short a time.

The trade policy of this country over the past several years has been appalling. The trade agreements into which we have entered have contributed to the loss of key employers, ravaging entire communities. But despite that clear evidence, we continue to see trade agreements being reached that will only aggravate this problem.

This has to stop. We cannot afford to pursue trade policies that gut our manufacturing sector and send good jobs overseas. We cannot afford to undermine the protections we have established for workers, the environment, and our public health and safety. And we cannot afford to squander our democratic heritage by entering into trade agreements that supercede our right to govern ourselves through open, democratic institutions.

The legislation I submit today sets forth principles for future trade agreements. It is a break with the so-called NAFTA model, and instead advocates the kinds of sound trade policies that will spur economic growth and sustainable development.

The principles set forth in this resolution are not complex. They are straightforward and achievable. The resolution calls for enforceable worker protections, including the core International Labor Organization standards.

It preserves the ability of the United States to enact and enforce its own trade laws.

It protects foreign investors, but states that foreign investors should not be provided with greater rights than those provided under U.S. law, and it protects public interest laws from challenge by foreign investors in secret tribunals.

It ensures that food entering into our country meets domestic food safety standards.

It preserves the ability of Federal, State, and local governments to maintain essential public services and to regulate private sector services in the public interest.

It requires that trade agreements contain environmental provisions subject to the same enforcement as commercial provisions.

It preserves the right of Federal, State, and local governments to use procurement as a policy tool, including through Buy American laws, environmental laws such as recycled content, and purchasing preferences for small, minority, or women-owned businesses.

It requires that trade negotiations and the implementation of trade agreements be conducted openly.

These are sensible policies. They are entirely consistent with the goal of increased international commerce, and in fact they advance that goal.

The outgrowth of the major trade agreements I referenced earlier has been a race to the bottom in labor standards, environmental standards, health and safety standards, in nearly every aspect of our economy. A race to the bottom is a race in which even the winners lose.

We need to turn our trade policies around. We need to pursue trade agreements that will promote sustainable economic growth for our Nation and for our trading partners. The resolution I submit today will begin to put us on that path, and I urge my colleagues to support it.

AMENDMENTS SUBMITTED & PROPOSED

SA 1659. Mr. REED (for himself, Mr. LEVIN, Mr. KENNEDY, Mrs. FEINSTEIN, and Mr. NELSON, of Florida) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes.

SA 1660. Mr. LEVIN (for himself, Mr. DEWINE, Ms. STABENOW, and Mr. VOINOVICH) submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1661. Mr. MCCAIN submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1662. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1663. Mr. CONRAD submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1664. Mr. BINGAMAN submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1665. Mr. REID (for Mr. DOMENICI (for himself and Mr. REID)) proposed an amendment to the bill H.R. 2754, supra.

SA 1666. Mr. REID (for Mr. DOMENICI (for himself and Mr. REID)) proposed an amendment to the bill H.R. 2754, supra.

SA 1667. Mr. REID (for Mr. DOMENICI (for himself and Mr. REID)) proposed an amendment to the bill H.R. 2754, supra.

SA 1668. Mr. REID (for Mr. DOMENICI (for himself and Mr. REID)) proposed an amendment to the bill H.R. 2754, supra.

SA 1669. Mrs. MURRAY submitted an amendment intended to be proposed by her to the bill H.R. 2754, supra.

SA 1670. Mr. NELSON, of Florida (for himself and Mr. GRAHAM, of Florida) submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1671. Mr. DASCHLE submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1672. Mr. DASCHLE submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1673. Mr. FEINGOLD submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1674. Mr. DORGAN (for himself and Mr. CONRAD) submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1675. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra.

SA 1676. Mr. DOMENICI (for Mr. KYL) proposed an amendment to the bill H.R. 2754, supra.

SA 1677. Mr. REID (for Mr. DASCHLE (for himself and Mr. JOHNSON)) proposed an amendment to the bill H.R. 2754, supra.

SA 1678. Mr. DOMENICI (for Mr. SHELBY) proposed an amendment to the bill H.R. 2754, supra.

SA 1679. Mr. VOINOVICH submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra.

SA 1680. Mr. FEINGOLD (for himself and Mr. ALLARD) submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1681. Mr. DOMENICI proposed an amendment to the bill H.R. 2754, supra.

SA 1682. Mr. REID proposed an amendment to the bill H.R. 2754, supra.

SA 1683. Mr. DOMENICI (for Mr. SMITH) proposed an amendment to the bill H.R. 2754, supra.

SA 1684. Mr. VOINOVICH (for himself, Mr. DEWINE, Mr. LEVIN, and Ms. STABENOW) submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1685. Mr. DEWINE submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra.

SA 1686. Mr. BYRD submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1687. Mr. DOMENICI (for Mr. KYL) proposed an amendment to the bill H.R. 2754, supra.

SA 1688. Mr. REID proposed an amendment to the bill H.R. 2754, supra.

SA 1689. Mr. DOMENICI (for Mrs. DOLE) proposed an amendment to the bill H.R. 2754, supra.

SA 1690. Mr. DOMENICI (for Mr. BENNETT) proposed an amendment to the bill H.R. 2754, supra.

SA 1691. Mr. REID (for Mr. WYDEN (for himself and Mr. SMITH)) proposed an amendment to the bill H.R. 2754, supra.

SA 1692. Mr. REID (for Mr. LEVIN (for himself, Mr. DEWINE, Ms. STABENOW, and Mr. VOINOVICH)) proposed an amendment to the bill H.R. 2754, supra.

SA 1693. Mr. JEFFORDS submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1694. Mr. REED submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1695. Mr. CORZINE (for himself and Mr. LAUTENBERG) submitted an amendment intended to be proposed by him to the bill H.R. 2754, supra; which was ordered to lie on the table.

SA 1696. Mr. DOMENICI (for Mr. COCHRAN) proposed an amendment to the bill H.R. 2754, supra.

SA 1697. Mr. REID (for Mr. DORGAN) proposed an amendment to the bill H.R. 2754, supra.

SA 1698. Mr. REID proposed an amendment to the bill H.R. 2754, supra.

SA 1699. Mr. REID (for Mr. CONRAD) proposed an amendment to the bill H.R. 2754, supra.

SA 1700. Mr. DOMENICI (for Mr. THOMAS) proposed an amendment to the bill H.R. 2754, supra.

SA 1701. Mr. REID proposed an amendment to the bill H.R. 2754, supra.

SA 1702. Mr. DOMENICI (for Mr. BENNETT) proposed an amendment to the bill H.R. 2754, supra.

SA 1703. Mr. REID proposed an amendment to the bill H.R. 2754, supra.

SA 1704. Mr. REID (for Mr. WYDEN) proposed an amendment to the bill H.R. 2754, supra.

SA 1705. Mr. REID (for Mr. FEINGOLD) proposed an amendment to the bill H.R. 2754, supra.

SA 1706. Mr. DOMENICI (for himself and Mr. REID) proposed an amendment to the bill H.R. 2754, supra.

SA 1707. Mr. DOMENICI proposed an amendment to the bill H.R. 2754, supra.

SA 1708. Mr. DOMENICI proposed an amendment to the bill H.R. 2754, supra.

SA 1709. Mr. REID (for Mr. BYRD) proposed an amendment to the bill H.R. 2754, supra.

SA 1710. Mr. REID (for Mr. BINGAMAN) proposed an amendment to the bill H.R. 2754, supra.

SA 1711. Mr. DOMENICI (for Mr. VOINOVICH (for himself, Mr. DEWINE, Mr. LEVIN, and Ms. STABENOW)) proposed an amendment to the bill H.R. 2754, supra.

SA 1712. Mr. REID proposed an amendment to the bill H.R. 2754, supra.

SA 1713. Mr. DOMENICI (for Mr. SPECTER) proposed an amendment to the bill H.R. 2754, supra.

SA 1714. Mr. REID (for himself and Mr. DOMENICI) proposed an amendment to the bill H.R. 2754, supra.

SA 1715. Mr. DOMENICI (for Mr. WARNER (for himself, Mr. SARBANES, Mr. ALLEN, and Ms. MIKULSKI)) proposed an amendment to the bill H.R. 2754, supra.

SA 1716. Mr. DOMENICI (for himself and Mr. REID) proposed an amendment to the bill H.R. 2754, supra.

SA 1717. Mr. REID (for Mr. REED) proposed an amendment to the bill H.R. 2754, supra.

SA 1718. Mr. REID (for Mr. CORZINE (for himself and Mr. LAUTENBERG)) proposed an amendment to the bill H.R. 2754, supra.

SA 1719. Mr. DOMENICI (for Mr. GRASSLEY (for himself and Ms. MURKOWSKI)) proposed an amendment to the bill H.R. 2754, supra.

SA 1720. Mr. REID (for Mr. SCHUMER) proposed an amendment to the bill H.R. 2754, supra.

SA 1721. Mr. REID (for Mr. SCHUMER) proposed an amendment to the bill H.R. 2754, supra.

SA 1722. Mr. SANTORUM (for Mr. BINGAMAN) proposed an amendment to the bill H.R. 2754, supra.

TEXT OF AMENDMENTS

SA 1659. Mr. REED (for himself, Mr. LEVIN, Mr. KENNEDY, Mrs. FEINSTEIN, and Mr. NELSON of Florida) proposed an amendment to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the end of title III, add the following:

SEC. 313. No funds appropriated or otherwise made available to the Department of Energy by this Act may be available for activities at the engineering development phases, phase 3 or 6.3, or beyond, in support of advanced nuclear weapons concepts, including the robust nuclear earth penetrator.

SA 1660. Mr. LEVIN (for himself, Mr. DEWINE, Ms. STABENOW, and Mr. VOINOVICH) submitted an amendment intended to be proposed by him to the bill H.R. 2754, making appropriations for energy and water development for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 31, between lines 7 and 8, insert the following: